IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.2358 OF 2007
WITH
NOTICE OF MOTION NO.3141 OF 2007

Anusuya Madnubhai Shah and others ..Plaintiffs.
Vs.
Arvind Vadilal Mothasha and others ..Defendants.

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Dr. Virendra tulzapurkar, Senior Advocate with Mr. G.D. Utangale i/b M/s. Utangale & Co. for the Plaintiffs.

Mr. D.D. Madon, Senior Advocate with Mr. J. Jariwala and Ms. Jyoti Ghag i/b M/s. Thakore Jariwala & Associates for Defendant Nos.1 to 11.

Mr. S.U. Kamdar i/b Mr. P.S. Shah and Mr. M.B. Matkar for Defendant Nos.12 and 13.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

3rd December, 2007.

P.C. :

1. At the hearing of the Notice of Motion, Mr. Tulzapurkar, Learned Senior Counsel appearing for the Plaintiffs, Mr. Madon, Learned Senior Counsel appearing for Defendant Nos.1 to 11 and Mr. S.U. Kamdar, Learned Counsel appearing for Defendant Nos.12 and 13 have stated, on instructions, that the following

order may be passed with the consent of the parties, without any further reasons being required to be recorded :

i) All the disputes and differences which form the subject matter of the Suit shall be referred to the arbitration of the Hon'ble Mr. Justice B.N. Srikrishna, Former Judge of the Supreme Court, who will act as sole arbitrator under the provisions of the Arbitration and Conciliation Act, 1996. There shall accordingly be a reference to arbitration in the aforesaid terms;

ii) Defendant Nos.12 and 13 shall within a period of eight weeks from today deposit an amount of Rs.1.50 Crores and furnish a bank guarantee of a nationalised bank in a further amount of Rs.1.50 Crores to the satisfaction of the Prothonotary and Senior Master. Until the amount is deposited with the Prothonotary and Senior Master and the guarantee is furnished, Defendants 12 and 13 undertake (subject to clause (iii) hereinbelow) not to commence construction on the immovable property more particularly described in Exh. A to the Plaint. The undertaking is

accepted;

iii) In the event that Defendant Nos.12 and 13 are unable to effect the deposit and/ or furnish the bank guarantee as undertaken hereinabove, that shall not preclude them from moving the Learned Arbitrator for permission to commence construction subject to securing the claim of the Plaintiffs. In the event that such an application is made, the Learned Arbitrator would be at liberty to pass orders thereon notwithstanding the undertaking which has been furnished, as aforesaid. The rights and contentions which the Plaintiffs may assert upon any such application are kept open to be considered by the Learned Arbitrator.

The Suit is accordingly disposed of.

In view of the disposal of the Suit, the Notice of Motion does not survive and is accordingly dismissed.